

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

In re:

Rene A. Bernier

Debtor

Chapter 7

Case No. 19-30934-EDK

**TRUSTEE'S MOTION TO SELL PROPERTY OF THE ESTATE BY PRIVATE SALE,
FREE AND CLEAR OF LIENS AND ENCUMBRANCES**

To the Honorable Elizabeth D. Katz, U.S. Bankruptcy Judge:

Now comes David W. Ostrander, Chapter 7 Trustee in the above captioned case ("Trustee"), by his counsel, and requests that the Court authorize him to sell the single family home located at 115 Pasadena Street, Springfield, Hampden County, Massachusetts (the "Property"), to Lamont and India Clemons ("Buyer") of Springfield, Massachusetts, for the price of one hundred thirty thousand dollars (**\$130,000.00**), free and clear of liens and encumbrances. In support of this Motion, the Trustee respectfully represents as follows:

1. The Debtor filed a Chapter 7 Voluntary Petition on November 26, 2019 (the "Petition Date").
2. The first Meeting Of Creditors was conducted on January 14, 2020.
3. On Schedule A/B – Property, the Debtor disclosed that he was the sole owner of the Property, and listed its value as \$101,500. Further, the Debtor stated that the value listed was the assessed value and "Debtor to surrender property."
4. On Schedule D – Creditors Who Have Claims Secured By Property, the Debtor listed Shellpoint Mortgage Servicing ("Shellpoint") as mortgagee for the Property, and that \$126,669 was owed to Shellpoint.
5. On his Voluntary Petition, the Debtor stated that he did not reside at the Property. In his Statement Of Financial Affairs, the Debtor stated that he last resided at the Property in July, 2019. In his Statement Of Intention, he stated that he intended to surrender the Property.

6. The Debtor claimed an exemption of one dollar (\$1.00) in the Property pursuant to 11 U.S.C. §522(d)(1).
7. At the Meeting Of Creditors, the Debtor confirmed that he no longer resided at the Property and that he intended to surrender it.
8. On January 31, 2020, the Trustee filed a Motion To Employ BK Global Real Estate Services and Teamwork Realty Group As Real Estate Brokers. That motion was granted on February 19, 2020.
9. Thereafter the brokers marketed the Property for sale. In the interim, however, Shellpoint filed, on May 19, 2020, a motion for relief from stay which was allowed on July 7, 2020. In the motion, Shellpoint represented that it was owed approximately \$129,425 as of April 17, 2020.
10. On October 28, 2020, the Trustee filed a Motion To Sell Property Of The Estate By Private Sale, Free And Clear Of Liens And Encumbrances to LE AND ASSOCIATES, LLC ("LE") for the price of \$102,500. That Motion was granted on November 30, 2020, but LE subsequently defaulted and forfeited its deposit of \$950 to the Bankruptcy Estate. Thereafter sale efforts were renewed that have resulted in the current offer from Buyer of \$130,000. A copy of the Purchase And Sale Agreement has been attached to this motion.
11. The Trustee has been informed that the mortgage payoff as of April 27, 2021, is approximately \$147,403.
12. From the sale proceeds, in addition to typical closing costs, a broker's commission in the amount of \$7,800 representing 6% of the sale price (\$130,000), will be paid. The commission will be split evenly between BK Global Real Estate Services, Teamwork Realty Group, LLC, and Homes Logic Real Estate (the broker that procured the Buyer), with each receiving 2% of the total commission amount.
13. The Property will be sold free and clear of liens, encumbrances and interests with any perfected, enforceable, valid liens shall attach to the proceeds of the sale according to priorities established under applicable law. Upon information and belief, there are no other liens, other than the Shellpoint mortgage, that encumber

the Property. Any real estate taxes or other municipal charges due will be paid from the sale proceeds.

14. Shellpoint has agreed to the sale in consideration of a payment in an amount not less than \$112,667.36 on or before June 25, 2021¹.
15. The minimum increase required for higher offers will not exceed 5% of the proposed original purchase price and, therefore, does not require Court approval pursuant to MLBR 6004-1 (c)(2)(B)(ii).
16. The Bankruptcy Estate will be responsible for obtaining a certified copy of the Bankruptcy Court Order approving the sale. The Buyer will be responsible for the cost associated with the recording of the Bankruptcy Court Order and the deed conveying the Property to the Buyer.
17. From the sale proceeds the Bankruptcy Estate will receive a payment of \$7,000 as a “carve out” from the Shellpoint mortgage, that will be used to pay the Estate’s administrative expenses and a dividend to creditors². The Trustee will hold these funds pending further order by the Court.

WHEREFORE, the Trustee requests that the Court enter an Order:

- a. authorizing him to sell the Property free and clear of liens, claims, encumbrances and interests;
- b. authorizing the distribution of the sale proceeds as set forth herein; and
- c. granting such other relief that is just and proper.

David W. Ostrander, Trustee

Dated: May 21, 2021

By: /s/ David W. Ostrander

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¹ The Trustee believes that this date will be extended as the sale closing is likely to occur after this date.

² The “bar date” to file claims was April 13, 2020. As of the current date, twelve claims have been filed, all unsecured and timely, in the total amount of approximately \$22,747.

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**ORDER ON TRUSTEE'S MOTION TO SELL PROPERTY OF THE ESTATE BY
PRIVATE SALE, FREE AND CLEAR OF LIENS AND ENCUMBRANCES**

Upon consideration of the Trustee's Motion To Sell Property Of The Estate By Private Sale, Free And Clear Of Liens And Encumbrances ("Motion To Sell Property Of The Estate"), after notice and hearing, it is hereby

ORDERED that the Trustee's Motion To Sell Property Of The Estate, that being the real property located at 115 Pasadena Street, Springfield, Hampden County, Massachusetts (the "Property"), to Lamont and India Clemons ("Buyer") for the price of one hundred forty thousand dollars (**\$130,000.00**) is allowed. It is further

ORDERED that the Trustee is authorized to make the following payments from the sale proceeds without further Order of this Court: a) typical closing costs associated with the sale of real estate; b) payment to Shellpoint Mortgage Servicing in satisfaction of its mortgage on the Property; and c) a broker commission in the amount of **\$7,800** to be split evenly between BK Global Real Estate Services, Teamwork Realty Group, LLC, and Homes Logic Real Estate, each receiving \$2,600. The Trustee is further authorized to accept a payment in the amount of **\$7,000** for the Bankruptcy Estate and shall hold these funds pending further Order of this Court. It is further

ORDERED that the Trustee is authorized to execute any and all documents to effectuate the sale.

Honorable Elizabeth D. Katz
U.S. Bankruptcy Judge

Dated